

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY  
&  
THE HONOURABLE MRS. JUSTICE K.HEMA**

**SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929**

**MFA.No. 1577 of 2001**

**OPMV.1341/1995 OF 2ND ADDL. MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM**

**APPELLANT/PETITIONERS**

1. **THANKAMMA,  
PULIVILATHUNDIL VEEDU,  
THURUTHIKKARA MURI,  
KUNNATHOOR VILLAGE.**
2. **SREEDEVI,  
D/O. THANKAMMA,  
PULIVILATHUNDIL VEEDU,  
THURUTHIKKARA MURI,  
KUNNATHOOR VILLAGE.**
3. **MANKA, D/O.THANKAMMA,  
PULIVILATHUNDIL VEEDU,  
THURUTHIKKARA MURI,  
KUNNATHOOR VILLAGE.**

**BY ADV. SRI.V.R.REJITHKUMAR**

**RESPONDENTS/RESPONDENTS**

1. **BABURAJAN NAIR (DIRVER),  
S/O. RAMAKRISHNAN NAIR,  
VELOOR VADAKKATHIL,  
CHAVARA P.O., KOLLAM.**
2. **SMT. NAZEEMA BEEVI (OWNER),  
THARAYIL VADAKKATHIL,  
PADANAYARKULANGARA SOUTH,  
KARUNAGAPPALLY.**
3. **ORIENTAL INSURANCE CO. LTD.,  
CHINNAKADA, KOLLAM.**

**BY ADV. SMT.K.T.LILLY @ LILLY JAMES -- R1 AND R2  
ADV. SRI.ANCHAL C.VIJAYAN --- R3**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD  
ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

**J.B.KOSHY & K.HEMA, JJ.**

-----  
M.F.A.No.1577 OF 2001  
-----

Dated 1<sup>st</sup> December, 2007

**JUDGMENT**

**Koshy,J.**

Appellants are the legal heirs of the deceased Ayyappan. On 23.5.1995 while the deceased was travelling in a mini lorry loaded with goods met with an accident . The lorry while overtaking a K.S.R.T.C. bus applied sudden brake on seeing another K.S.R.T.C. bus coming from the opposite direction, the lorry capsized and the appellant sustained fatal injuries. After suffering for four days he succumbed to the injuries. He was the sole bread winner of the family. He left his wife and two unmarried daughters. He was a fish dealer. The accident occurred in the Neendakara - Poothakuzhi public road near the market when the lorry with fish was being taken by him to the market. He was travelling with his own goods. Dependents claimed that the deceased was earning more than Rs.6,000/= per month. The Tribunal has fixed only Rs.1,800/= as monthly income even though it was accepted by him that the deceased was a dealer in fish. The mini lorry was loaded with fish purchased by him for selling. We are of the opinion that on the facts of this case, Rs.3,000/= can be fixed as monthly income. If one third is deducted for personal expenses, loss of dependency income will be Rs.2,000/= per month. Tribunal deducted two third for calculating

monthly dependency. That was wrong. The Tribunal has taken 7 as the multiplier. As per the second schedule, 5 is the apt multiplier for persons aged above 60. The deceased completed the age of 60 and, therefore, only 5 can be taken as the multiplier. If that be so, compensation payable will be  $\text{Rs.}2,000 \times 12 \times 5 = \text{Rs.}1,20,000/=$ . Tribunal has granted only  $\text{Rs.}50,000/=$  for loss of dependency. Thus, the additional compensation payable on this count is  $\text{Rs.}70,000/=$ . Third respondent insurance company should deposit the above amount, over and above the compensation granted by the Tribunal, with 7.5% interest from the date of application till its deposit. On deposit of the amount, 50% is allowed to be withdrawn by the first appellant widow and balance in equal proportion by appellant Nos. 2 and 3.

The appeal is partly allowed.

**J.B.KOSHY**  
**JUDGE**

**K.HEMA**  
**JUDGE**

tk